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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,609	03/11/2004	Laurence Cooper	1954-417	4062

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EXAMINER	
BELYAVSKYI, MICHAIL A	

ART UNIT	PAPER NUMBER
1644	

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/797,609	COOPER ET AL.	
	Examiner	Art Unit	
	Michail A. Belyavskyi	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) *7-15* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03/11/04* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-15 are pending.

2. Applicant's election with traverse of Group I, claims 1-6 in the reply filed on 06/05/06 is acknowledged Applicant traverse the Restriction Requirement on the grounds that the search of all Groups together would not constitute a serious search burden on the examiner and that search of the claims of Group I would provide useful information for all claims.

This is not found persuasive because the MPEP 803 (August 2001) states that "For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search". The Restriction Requirement enunciated in the previous Office Action meets this criteria and therefore establishes that serious burden is placed on the examiner by the examination of more than one Group. The Inventions are distinct for reasons elaborated in paragraphs 3-5 of the previous Office Action and above

The requirement is still deemed proper and is therefore made FINAL.

Claims 7-15 are withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b) as being drawn to nonelected inventions.

Claims 1-6 drawn to a bi-specific T cells which expresses on its surface a viral antigen T cell receptor and cancer antigen-specific chimeric receptor are under consideration in the instant application.

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention *to which the claims are directed.*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published of a national application published under section 122(b) only if the international application designation the United States was published under Article 21(2)(a) of such treaty in the English language; or
(e2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claim 1-6 are rejected under 35 U.S.C. 102(a) as being anticipated by Rossig et al (Blood, March 2002, Vol.99, pages 2009-2016).

Rossig et al., teach a bi-specific T cell which expresses on its surface a viral antigen T cell receptor and cancer antigen-specific chimeric receptor (see entire document, Abstract in particular). Rossig et al., teach that viral antigen is EBV-specific antigen (see page 2010 in particular). Rossig et al., teach that cancer antigen includes neuroblastoma antigen, glioblastoma and melanoma antigens (see page 2010, right column in particular).

The reference teaching anticipates the claimed invention.

6. Claim 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel et al (Cancer Gene Therapy, 2000, Vol.7, pages 1127-1134).

Patel et al., teach a bi-specific T cell which expresses on its surface a viral antigen T cell receptor and cancer antigen-specific chimeric receptor (see entire document, Abstract and page 1128 left column in particular). Patel et al., teach that viral antigen is adenovirus specific antigen (see page 1128 in particular). Rossig et al., teach that cancer antigen can be any cancer antigen including neuroblastoma antigen, see page 1128, right column in particular).

The reference teaching anticipates the claimed invention.

7. Claim 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 2003/0148982

US Patent 2003/0148982 teaches a bi-specific T cell which expresses on its surface a viral antigen T cell receptor and cancer antigen-specific chimeric receptor (see entire document, Abstract in particular). US Patent 2003/0148982., teaches that viral antigen is adenovirus specific antigen or EBV antigen (see column 2 in particular). US Patent 2003/0148982 teaches that cancer antigen can be any cancer antigen including CD19 antigen (see column 2 in particular)

The reference teaching anticipates the claimed invention.

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

9. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim1-6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-5 of copending Application No. 2006/0018878.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1-5 of copending Application No. 2006/0018878 recites a bi-specific T cell which expresses on its surface a viral antigen T cell receptor and cancer antigen specific chimeric receptor, wherein cancer antigen is CD19 or CD20 and virus antigen is EBV or influenza.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. No claim is allowed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michail Belyavskyi whose telephone number is 571/272-0840. The examiner can normally be reached Monday through Friday from 9:00 AM to 5:30 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571/272-0841.

The fax number for the organization where this application or proceeding is assigned is 571/273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MICHAIL BELYAVSKYI, PH.D.
PATENT EXAMINER

7/28/06